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## IN THE UNITED STATES DISTRICT COURT

## FOR THE NORTHERN DISTRICT OF CALIFORNIA

MILTON LEWIS, Jr.,

No. C 08-02337 CW (PR)

Petitioner.

ORDER DENYING MOTION FOR  
APPOINTMENT OF COUNSEL

v.

ROBERT HOREL, Warden,

Respondent.

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Petitioner has requested appointment of counsel in this action.

The Sixth Amendment right to counsel does not apply in habeas corpus actions. See Knaubert v. Goldsmith, 791 F.2d 722, 728 (9th Cir. 1986). Title 18 U.S.C. § 3006A(a)(2)(B), however, authorizes a district court to appoint counsel to represent a habeas petitioner whenever "the court determines that the interests of justice so require" and such person is financially unable to obtain representation. The decision to appoint counsel is within the discretion of the district court. See Chaney v. Lewis, 801 F.2d 1191, 1196 (9th Cir. 1986); Knaubert, 791 F.2d at 728; Bashor v. Risley, 730 F.2d 1228, 1234 (9th Cir. 1984). The courts have made appointment of counsel the exception rather than the rule by

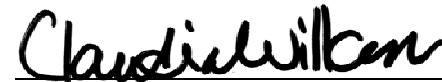
1 limiting it to: (1) capital cases; (2) cases that turn on  
2 substantial and complex procedural, legal or mixed legal and  
3 factual questions; (3) cases involving uneducated or mentally or  
4 physically impaired petitioners; (4) cases likely to require the  
5 assistance of experts either in framing or in trying the claims;  
6 (5) cases in which petitioner is in no position to investigate  
7 crucial facts; and (6) factually complex cases. See generally 1 J.  
8 Liebman & R. Hertz, Federal Habeas Corpus Practice and Procedure  
9 § 12.3b at 383-86 (2d ed. 1994). Appointment is mandatory only  
10 when the circumstances of a particular case indicate that appointed  
11 counsel is necessary to prevent due process violations. See  
12 Chaney, 801 F.2d at 1196; Eskridge v. Rhay, 345 F.2d 778, 782 (9th  
13 Cir. 1965).

14 At this early stage of the proceedings the Court is unable to  
15 determine whether the appointment of counsel is mandated for  
16 Petitioner. Accordingly, the interests of justice do not require  
17 appointment of counsel at this time, and Petitioner's request is  
18 DENIED. This denial is without prejudice to the Court's sua sponte  
19 reconsideration should the Court find an evidentiary hearing  
20 necessary following consideration of the merits of Petitioner's  
21 claims.

22 This Order terminates Docket no. 3.

23 IT IS SO ORDERED.

24 Dated: 7/22/08  
25



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CLAUDIA WILKEN  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

MILTON LEWIS JR,

Plaintiff,

Case Number: CV08-02337 CW

V.

ROBERT HOREL et al.

Defendant.

## **CERTIFICATE OF SERVICE**

7 ROBERT HOREL et al,  
8 Defendant.

10 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

11 That on July 22, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said  
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said  
envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located  
in the Clerk's office.

15 Milton J. Lewis T48953  
Pelican Bay State Prison  
16 P.O. Box 7500  
Crescent City, CA 95531

Dated: July 22, 2008

Richard W. Wieking, Clerk  
By: Sheilah Cahill, Deputy Clerk